

Remedy and Liability

Office of the Attorney General of Guam
General Elizabeth Barrett-Anderson
Notary Training 2016



LIABILITY

5 GCA §33501 - PART 1

A notary is liable for damages caused by acts of misconduct in performing notarization



LIABILITY

5 GCA §33501 - PART 1

A Notary is subject to three kinds of penalties based on misconduct:

Administrative

Criminal

Civil



LIABILITY

5 GCA §33501 - PART 1

Surety is liable to the extent of
the bond.

Employer has limited liability if he
directed or consented to the
misconduct.



ADMINISTRATIVE REVOCAION

5 GCA §33511 Part 2

1. Conviction of a crime involving dishonesty or moral turpitude
2. Official misconduct:
 - (1) a notary's performance of or failure to perform any act prohibited or mandated, respectively, by this Chapter or by any other law in connection with a notarization; or
 - (2) a notary's performance of a notarial act in a manner found by the Attorney General to be negligent or against the public interest.



DISHONESTY



Stealing/Theft
Falsifying a Document
Fraud
Perjury
Misrepresentation



MORAL TURPITUDE



A crime involving moral turpitude includes any felony...any crime involving personal injury, and any crime involving a breach of official duty if done willfully.



“refers generally to conduct that shocks the public conscience as being inherently vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general.”



Domestic Violence
Sexual Assault Abuse
Crimes Resulting in Death of Another
Injuring Another Person
Repeat Drunk Driving
Harming Children/Elderly
Public Corruption



WARNING

The Attorney General may deliver a written Official Warning to cease misconduct to any notary whose actions are judged to be official misconduct under § 33104 of this Chapter.



SUSPENSION

Although not specifically stated
suspension may also be imposed as
a lesser remedy to revocation



Official Misconduct

Section 33401(k)

(1) a notary's performance of, or failure to perform, any act prohibited or mandated, respectively, by this Chapter or by any other law in connection with a notarization; or

(2) a notary's performance of a notarial act in a manner found by the Attorney General to be negligent or against the public interest.



NEGLIGENT ACTS



- ✓ Not properly filling out all information in your journal
- ✓ Not securing your journal in a safe place
- ✓ Forgetting to give an oath for a jurat
- ✓ Giving legal advice
- ✓ Notarizing without the signer present



PUBLIC INTEREST



INJUNCTION

The Attorney General may seek an injunction to prevent or stop a notary from continuing to perform unlawful acts



CRIMINAL LIABILITY

5 GCA §33511

A notary who knowingly and repeatedly performs or fails to perform any act prohibited or mandated by this Chapter is guilty of a **3rd degree felony**.

A notary who knowingly performs a notarization for a person who does not appear before the notary or at the notary's office is guilty of a **3rd degree felony**



Willful Crimes

Impersonation

Willful Possession

Improper Influence



IMPERSONATION

5 GCA §33520

Any person not a notary who...impersonates a notary is guilty of a **3rd degree felony**.

Impersonation includes performing notarial acts when the commission of the person performing has expired or been revoked or the person has resigned his or her commission.



WRONGFUL POSSESSION

5 GCA §3352

Any person who knowingly obtains, conceals, defaces, or destroys the seal, journal, or official records of a notary is guilty of a 3rd degree felony.



IMPROPER INFLUENCE

5 GCA §33522

Any person who knowingly solicits, coerces, or in any way influences a notary to commit official misconduct is guilty of a
3rd degree felony.



NOT AN ATTORNEY

A notary is NOT an attorney under American law.

Do not give advice or assist in the preparation of a document that requires legal background



REASONABLE CARE

A notary should always exercise reasonable care in the performance of notary acts.



FALSE STATEMENT

A notary should always exercise reasonable care not to notarize a document “containing a statement known by the notary to be false” or a document intended to defraud.



FINANCIAL OR OTHER INTEREST

A notary should not notarize a document wherein the notary will receive an interest, right, or title.



RELATED FAMILY MEMBERS

A notary should not notarize for immediately family members, *e.g.*
spouse, children, parents,
grandparents, grandchildren,
brothers and sisters





**DO YOU HAVE
ANY QUESTIONS**

